

September 5, 2014

VIA ELECTRONIC DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation in MB Docket No. 14-57

Dear Ms. Dortch:

On September 3 and September 4, 2014, representatives from Consumers Union, Free Press, The Open Technology Institute at New America Foundation (“OTI”), and Public Knowledge (together, “Public Interest Representatives”) conducted several meetings with Commissioners and their advisors to discuss the proposed Comcast-Time Warner Cable merger and the related divestiture transaction with Charter Communications.

A meeting took place on September 3 with Commissioner Rosenworcel and Clint Odom, her Policy Director. The meetings on September 4 included one with Commissioner O’Rielly and Amy Bender, his Legal Advisor for wireline issues; one with Commissioner Pai and Matthew Berry, his Chief of Staff; and one with Adonis Hoffman, Commissioner Clyburn’s Chief of Staff and Senior Legal Advisor for media issues.

Delara Derakhshani of Consumers Union and John Bergmayer of Public Knowledge attended each of these meetings. Lauren Wilson of Free Press joined the meetings with Commissioners Rosenworcel and O’Rielly, and with Mr. Hoffman. Matt Wood of Free Press joined those with Commissioners Rosenworcel and Pai. Todd O’Boyle of Common Cause joined those with Commissioner Rosenworcel and Mr. Hoffman. And Sarah Morris of OTI joined the meeting with Commissioner Rosenworcel.

As set forth at length in the groups’ respective petitions to deny, the proposed merger would have far-reaching negative effects on consumers across the nation and on the video programming, broadband, and device product markets among others. The resulting harms to competition and consumers far outweigh any purported public interest benefits – which the

Public Interest Representatives believe are overstated, tenuous, and not merger-specific. Comcast has thus failed to demonstrate that the proposed transaction will serve the public interest. The Public Interest Representatives strongly believe that conditions are insufficient to remedy the harms that would result from the merger. As such, the groups are unified in their belief that the Commission should reject the deal.

The Public Interest Representatives are particularly concerned about the increased leverage and bargaining power a post-merger Comcast would wield. Comcast already has significant market power in the market for distribution of online content and services. As other parties in the proceeding have pointed out, this has enabled Comcast to restrict content providers' ability to sell programming to alternative online distributors. It also puts Comcast in a prime position to extract tolls before allowing content providers to reach its massive subscriber base. A merger with Time Warner Cable would give the merged entity an even greater ability to extract such fees and exercise such control over its business partners, and would also have a net effect of higher prices, decreased choices, and less diversity of content for consumers.

The Public Interest Representatives also discussed Comcast's market definition arguments and its characterization of the level of competition it faces in the broadband marketplace. Comcast greatly overstates that level of competition by defining the product market improperly. For example, despite Comcast's claims to the contrary, DSL and wireless broadband offerings do not serve as substitutes for advanced broadband services such as cable and fiber-based broadband.

Comcast already dominates the market for all broadband services, and particularly for these advanced broadband services at speeds of 10 Mbps, 25 Mbps and above. The merger would give Comcast control of nearly half of these broadband subscribers at these speed tiers. Comcast incorrectly suggests that it would control just 35.5% of the broadband market post merger – still a dangerously high concentration level and share of the national market. But Comcast's reliance on this figure is sorely misplaced because it takes into account broadband subscribers at speeds as low as 3 Mbps. That number fails to meet the Commission's current definition of broadband; and the Commission itself in multiple proceedings has suggested that such speeds are woefully outdated and insufficient to meet consumers' current and future broadband needs.

The Public Interest Representatives also expressed skepticism that any of Comcast's purported public interest benefits would actually accrue to customers. Its proposed technological upgrades are not merger-specific benefits, and could come along with forced price increases that consumers would be made to bear. The deal also could result in increased costs rather than efficiencies, because of the difficulties underlying the integration of different cable systems, and customers would bear the brunt of these cost increases too.

Furthermore, there is little reason to believe that combining two companies with deservedly dismal reputations for customer service would somehow improve the situation for consumers. To the contrary, a merged entity with an even larger national presence and greater market dominance will have even less of an incentive to address the needs of customers – especially if those consumers have nowhere to turn for alternatives.

Finally, we discussed the insufficiency of conditions as evidenced by various parties' first-hand experiences with the Comcast/NBCU conditions. Those experiences show that behavioral conditions can be difficult to craft and difficult to enforce, and they often do not work as planned.

Respectfully submitted,

/s/ Delara Derakhshani

Policy Counsel
Consumers Union